

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DELOS D. SPENCER, :  
Petitioner, :  
v. : CIVIL ACTION NO. 3:07-CV-0256  
(JUDGE KOSIK)  
JAMES L. GRACE, :  
et al., :  
Respondents. :  
:

**MEMORANDUM AND ORDER**

AND NOW, THIS 16<sup>th</sup> DAY OF MAY, 2007, IT APPEARING TO THE COURT THAT:

- [1] On February 9, 2007, Delos D. Spencer ("Petitioner") filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254;
- [2] the matter was assigned to United States Magistrate Judge J. Andrew Smyser;
- [3] the respondents filed a response to the petition on March 8, 2007;
- [4] the Magistrate Judge filed a Report and Recommendation on April 17, 2007, suggesting that we dismiss the instant habeas petition as untimely;
- [5] neither Petitioner, nor the respondents filed objections to the Report and Recommendation.

IT FURTHER APPEARING THAT:

- [6] If no objections are filed to a Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of the plaintiff's claims. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S.Ct.

466 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987);

[7] having examined the Magistrate Judge's Report and Recommendation, we agree with his recommendation to dismiss the instant petition for writ of habeas corpus;

[8] we concur with the Magistrate Judge's analysis of the issues raised in the habeas petition and find the Magistrate Judge's review of the record to be comprehensive;

[9] specifically, we agree with the conclusion that Petitioner filed the habeas action beyond the one-year period of limitation for filing an application for writ of habeas corpus set forth in 28 U.S.C. § 2244(d)(1).

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the Report and Recommendation of Magistrate Judge J. Andrew Smyser dated April 17, 2007, (Doc. 11) is **adopted**;

[2] the petition for writ of habeas corpus (Doc. 1) filed on February 9, 2007, is **dismissed**;

[3] the Clerk of Court is directed to close this case, and forward a copy of this Memorandum and Order to the Magistrate Judge; and,

[4] based on the court's conclusion herein, there is no basis for the issuance of a certificate of appealability.

*s/Edwin M. Kosik*  
United States District Judge